IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3256 OF 1999.

PETITIONER: Coral Cosmetics Limited
a Company incorporated under the Companies Act, 1956 having its office at 18, Raj Mahal, 84 Veer Nariman Road, Bombay 400 020.

VERSUS

RESPONDENTS:
1. The Union of India.
2. The Commissioner of Central Excise Bombay, Div. III, having his office at Navprabhat Chambers, Ranade Road, Dadar, Bombay 400 028.
3. The Assistant Commissioner of Central Excise, having his office at Div. Kalyan-II, Bhagwandas Mansion, Shivaji Chowk, Kalyan, Thane Dist. Maharashtra State.
4. The Superintendent of Central Excise, Bombay, having his office at Range-II, div. Kalyan-II, Niharika Bldg. Vailpeer Road, Kalyan, Thane Dist.

Mr. Atul Setalwad,with Mr.D.B.Shroff i/b M/s.Crawford Bayley & Co., Adv. for Petitioner.
Mr. P.S.Jetly with Mr.A.S.Rao, Adv. for Respondents.

CORAM : V.C.DAGA &
J.P.DEVADHAR, JJ.

RESERVED ON : 5th October 2005

Pronounced on : 23rd December 2005.

ORAL JUDGMENT (Per : V.C.Daga, J.)

The petitioners seek to challenge the constitutional validity of Section 131 and 132 of the Finance Act, 1999. By section 131 of the Finance Act, clause (xxviii) was inserted in Section 37 (b) of the Central Excise Act, 1944 (the Act) with effect from 1st March, 1995. By section 132 of the Finance Act, 1999, sub-Rule 57-F (17) as inserted by Central Excise (Amendment) Rules, 1997 came to be validated from 1st March, 1997 and clause (e) of sub-rule (17) inserted by the Central Excise (Elevent Amendment) Rules came to be validated with effect from 1st day of October, 1997. As a result, the credit earned by the petitioners of the duty paid on the inputs used, in, or in relation to the manufacture of final product, namely toothpaste, was made to have lapsed and not to be allowed to be utilised for payment of

duty on any excisable goods cleared for home consumption, or for export, except to the extent of the credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the 1st day of October, 1997.

FACTS

2. Facts giving rise to the present petition are that, the petitioners are a Company duly incorporated under the Companies Act, 1956, registered as Small Scale Industry, engaged in the manufacture of Tooth Paste, being a product reserved for Small Scale Industrial Units.

3. The petitioners for the purpose of manufacture of the toothpaste bring into their factory various inputs, which are utilised in the manufacture of the said toothpaste. The petitioners have been availing of Modvat Credit on the said inputs and utilising the same interalia for payment of duty on their final product under Modvat Credit Scheme since the date the said scheme came into effect.

4. Section AA of Chapter-V of the Central Excise Rules,

1944 contains a scheme for availing Modvat Credit of the duty paid on the inputs used in or in relation to the manufacture of final products and, inter alia, permitting utilisation of such credit towards payment of excise duty on the final products. This scheme is known as ‘Modvat Credit Scheme’.

5. Rule 57 A prescribes that the Scheme shall apply to such finished excisable goods i.e. final products as the Central Government may, by notification in the official gazette, specify in this behalf for the purposes of allowing credit of any duty of excise, or the additional duty, under Section 3 of the Customs Tariff Act, 1975, as may be specified in the said Notification, paid on the inputs used in the manufacture of the said final products.

6. As per Modvat Scheme, once the inputs and final product are specified in the notification issued by the Central Government under Rule 57A the manufacturer of final products becomes entitled to take credit of the duty paid on the inputs and is entitled to utilise credit the moment inputs/ raw materials are

received in the factory, for use in the manufacture of the final product.

7. Sub-Rule (4) of Rule 57A provides, that the credit of the duty as specified shall be allowed on inputs used in the manufacture of final products, as well as, used in or in relation to the manufacture of final products, either directly or indirectly or whether contained in the final products, or not. The credit available to the manufacture can be utilised and/ or can be adjusted in the payment of duty on the final product, the moment the inputs are received in the factory for use in the manufacture of the final product.

8. The petitioners state that the toothpaste and the inputs used in the manufacture thereof, are all notified by the Central Government, in the Notification issued in exercise of the powers under Rule 57A of the Rules. Accordingly, petitioners filed a declaration under Rule 57G of the said Rules and has been at all time, availing of the Modvat Credit. The petitioners also state that

they maintain all records and have been duly following the procedure prescribed for availing Modvat Credit under the Scheme.

9. On or about 18th September, 1997 the first respondent, in exercise powers under Section 37 of the Act issued a notification being Notification No.57/97-Central Excise (N.T.). By the said Notification No.57/97 the first respondent had amended the Central Excise Rules, 1944 whereby Rule 57-F (17)(e) came to added which had the effect of disallowing modvat credit lying to the credit of the assessee as on 01.10.1997. By the said Rule the balance credit, if any, was to lapse by a deeming fiction and was not to be allowed for the utilisation for payment of duty of any excisable goods cleared for home consumption or export. According to the petitioners, as on 01.10.1997 the Modvat Credit lying unutilised in their account amounted to Rs.98,19,113/-. By virtue of the said amendment to the said Rule, the said credit amount was deemed to have lapsed.

10. The petitioners being aggrieved by the aforesaid

amendment, challenged the constitutional validity of Rule 57 F (17) (e) of the said Rules by Writ Petition No.2018 of 1998 filed in this Court. By an order dated 22nd June, 1998 operation of Notification 57/97 CE(NT) was stayed till disposal of the said writ petition and the petitioners were permitted to utilise the credit lying in their account subject to furnishing a bank guarantee each time for a sum equivalent to the utilisation of Modvat Credit. The Supreme Court during pendency of the aforesaid petition by its judgment dated 28th January, 1999 in the case of ***Eicher Motors Limited 1999 (106) ELT 3 (SC)*** struck down sub-Rule (4A) of Rule 57F, which was inserted into the Rules pursuant to the budget for the year 1995-96 and provided for lapsing of credit lying unutilised on 16th March, 1995 with a manufacturer of tractors and motor vehicles.

11. The Supreme Court while striking down sub-rule (4-A) referred above, held that the assessee had a vested right which could not be taken away and observed as under :

> *"When on the strength of the rules available, certain acts had been done by the parties*

concerned, incidents following thereto must take place in accordance with the scheme under which the duty had been paid on the manufactured products and if such a situation is sought to be altered, necessarily it follows that right, which had accrued to a party such as availability of the scheme, is affected and, in particular, it loses sight of the fact that provision for facility of credit is as good as tax paid till tax is adjusted on future goods on the basis of several commitments which would have been made by the assessees concerned. Therefore, the scheme sought to be introduced cannot be made applicable to the goods which have already come into existence in respect to which the earlier scheme was applied under which the assessees had availed of the credit facility for payment of taxes. It is on the basis fo the earlier scheme necessarily that the taxes have to be adjusted and payment made complete. Any manner or order of application of the said rule would result in affecting the rights of the asessees."

12. In order to get over the aforesaid judgment of the Supreme Court, the Central Government by the Finance Bill, 1999 sought to enact Sections 131 and 132, which were assented by the President of India on 12th May, 1999 which ultimately became Finance Act of 1999 w.e.f. 1st April, 1999. This Finance Act of 1999, the text of which is reproduced hereinbelow :

"131 : Amendment of Section 37. - In

section 37 of the Central Excise Act, in sub-section (2) -

(a) after clause (ib), the following clause shall be inserted, namely :-

(ibb) provide for charging or payment of interest on the differential amount of duty which becomes payable or refundable upon finalisation of all or any class of provisional assessments."

(b) after sub-clause (xxvii), the following sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 16th day March, 1995, namely :-

"(xxviii) provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.

"132. Validation of certain rules. - (1) In the Central Excise Rules, 1944, made by the Central Government in exercise of the powers conferred under section 37 of the Central Excise Act, in rule 57F -

(a) sub-rule (4A), as inserted by the Central Excise (Fourth Amendment) Rules, 1995, shall be deemed to have and to have always had effect from the 16th day of March, 1995;

(b) sub-rule (17), as inserted by the Central Excise (Amendment) Rules, 1997, shall be deemed to have and to have always had effect from

the 1st day of March, 1997 ;

(c) clauses (c) and (d) of sub-rule (17) as inserted by the Central Excise (Seventh Amendment) Rules, 1997, shall be deemed to have and to have always had effect from the 1st day of August, 1997 ;

(d) clause (e) of sub-rule (17), as inserted by the Central Excise (Eleventh Amendment) Rules, 1997, shall be deemed to have and to have always had effect from the 1st day of October, 1997.

(2) Any action taken or anything done or purported to have been taken or done at any time during the period commencing from the 16th day of March, 1995 and ending with the day of Finance Act, 1999 receives the assent of the President (hereinafter referred to as the said period) under the Central Excise Act or any rules made thereunder in relation to the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validity and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any Court, tribunal or other authority, -

(a) the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods and also for not allowing such credit

to be utilised for payment of any kind of duty on any excisable goods, during the said period shall be deemed to always have been, as validly lapsed, as if the said period shall be deemed to always have been, as validly lapsed, as is the amendments made by sub-section (1) had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any Court for allowing the credit of, and no enforcement shall be made by any court of any decree or order allowing the credit of duty which has been lapsed and not allowed to be utilised if the amendments made by sub-section (1) had been in force at all material times ;

(c) recovery shall be made of all the credit of duty, which have not been lapsed or, a the case may be, which have been taken or utilised but which would have been lapsed, or as the case may be, would not have been allowed to be taken or utilised, if the amendments made by sub-section (1) had been in force at all material times, within a period of thirty days from the day, the Finance Act, 1999 receives the assent of the President and in the event of non-payment of such credit of duties within this period, in addition to the amount of credit of such duties recoverable, interest at the rate of thirty six percent, per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation : For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."

The aforesaid provisions of the Finance Act, 1999 are the subject matter of challenge in this petition on the grounds set out in the petition and canvassed before us as mentioned in the paras appearing hereinafter.

SUBMISSIONS

13. Mr. Atul Setalwad, learned Senior Counsel appearing for the petitioners proceeds on the basis that there is no dispute that the legislature has power to render ineffective an earlier decision of the Supreme Court by removing or altering or neutralising the legal basis in the unamended law on which such decision was founded, even retrospectively. However, in his submission, in the case at hand, the Finance Act, 1999 does not remove, alter or neutralise the legal basis of the unamended law or the law laid down by the Supreme Court in Eicher Motors (supra). He submits that the defects in the legislation pointed by the Supreme Corut in Eicher Motors (supra) have not been eliminated by the aforesaid amendments.

14. Mr. Setalwad submits that Rule 57A confers right in a manufacturer to take credit of duty-paid on inputs once such inputs are used in or in relation to the manufacture of final products. In his submission, he submits that the petitioners have legitimately obtained and taken the Modvat Credit due to them under the provisions of law which has resulted in creating vested right, in favour of the petitioner, as held by the Supreme Court in various judgments and reiterated in Eicher Motors(supra). According to him, the Supreme Court held that the vested right flows from Rule 57A and that credit could not lapse on account of the vested right having accrued in favour of the manufacturer at the time when the inputs were brought into the factory. According to Mr. Setalwad, the provisions of Finance Act, 1999 does not make any change to Rule 57A and the provision by which his vested right has accrued in a manufacturer has not been altered in any manner. In other words, Section 131 of the Finance Act, 1999 has not altered the basis of the judgment of the Supreme Court since it does not amend Rule 57-A as such in his submission, vested right still

continues.

15. Mr. Setalwad, in support of his submissions, pressed into service the judgment of the Supreme Court in the case of ***Eicher Motors Ltd.*** (Supra) and specifically placed reliance on the observations, which are reproduced below :

> *"Thus the assesses became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing scheme."*
>
> *"Thus the right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until the goods existed."*

16. Mr. Setalwad further submits that in ***Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, 2003 (155) E.L.T. 14 (S.C.)***, the Supreme Court was dealing with two appeals where the Appellants had been denied a refund of input duty on goods which they had exported. The Supreme Court while dealing with two statutory appeals, where the validity of Sub-Rule 17 of Rule

57-F was not a subject matter of challenge, held that Sub-Rule 17 must be read in the manner laid down in ***Eicher Motors*** *(supra)* and also held that Sub-Rule 17 could not apply to vested rights and could not cover goods manufactured prior to 16th March, 1995. Mr. Setalwad submits that in the facts of that case, it was observed that the right to refund of duty got vested when the goods were exported.

17. Mr. Setalwad, turning to the facts of the present case, submits that the right accrued and was vested when duty was paid on the inputs, and the inputs were received. In his submission, Sections 131 and 132 of the Finance Act, 1999, do not, at all, vary the basis of the judgment of the Supreme Court in ***Eicher Motors*** (Supra), but merely purport to retrospectively validate sub-Rule 17 of Rule 57 F. He submits that seeking to retrospectively validate the Rule by which the vested right was taken away, is an interference with the law laid down by the Supreme Court under Article 141 of the Constitution of India. In as much as the provisions of the Finance Act, 1999 are an attempt to get around

the decision of the Supreme court in the case of Eicher Motors (supra), the same is thus contrary to law and unconstitutional. He submits that the legislative encroachment upon judicial power, which is not permissible, and, consequently, the provisions are ultra virus and void, and should be struck down. He relied upon the judgment of the Supreme Court in the case of ***State of Haryana Vs. Karnal Cooperative Farmer's Society Ltd. AIR 1994 SC 1***.

18. Alternatively, Mr. Setalwad submits that Rule 57F (17) and/ or Sections 131 and 132 of the Finance Act, 1999 should be read down so as not to affect the vested rights of the petitioners, as was done by the Supreme Court in Samtel India Ltd. (Supra). He submits that the Court can always read down a provision to uphold its validity. In support of his submission he also relied upon the decision of the Supreme Court in the case of ***State of Madhya Pradesh Vs. M/s. Chhotabhai Jethabhai Patel & Co.***, reported in **AIR 1972 SC 971**.

19. Per contra, Mr. Jetly, learned counsel appearing for the

respondents submitted that Sections 131 and 132 of the Finance Act, 1999 are intra-vires the Constitution of India. He submits that a legislature can always validate a law with retrospective effect which has been declared to be invalid by the Supreme Court/ High Court by removing or curing the infirmities and vitiating factors noticed in the declaratory judgment. If in the light of such validating and curative exercise made by the legislature, the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative exercise, overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the light of which earlier judgment becomes irrelevant.

20. Mr. Jetly further submits that the infirmities / defects and vitiating factors noted by the Supreme Court in the case of ***Eicher Motors Ltd. Vs. Union of India*** (supra) to the effect that Section 37 of the Central Excise Act, 1944 (for short "said Act") did not enable the authorities to frame a rule providing for lapsing of the credit balance in modvat account, the said defects have been removed or cured by Sections 131 and 132 of the Finance Act, 1999, with retrospective effect.

21. Mr. Jetly submits that no person can acquire a vested right from a defect in the statute and seek a windfall from the mistakes of the legislature. In his submission, the validity of legislations retroactively curing defects in taxing statutes is well recognized. He reiterates that the power of Parliament to make retrospective legislation is well settled. Such legislation per se is not unreasonable. There is no particular feature of the impugned legislation which can be said to create any unreasonable restriction upon the fundamental or statutory rights of the petitioners. He submits that Sections 131 and 132 of the Finance

Act, 1999 are only making small repairs and that is a permissible mode of legislation. In his submission, Sections 131 and 132 of the Finance Act, 1999 do not act harshly nor there is any scope for arbitrariness or discrimination so as to violate Articles 14 and 19(1)(g) of the Constitution of India.

22. In the submission of Mr. Jetly, Sections 131 and 132 of the Finance Act, 1999 have removed voidness, disability or other defects which were existing in the legislation. A retrospective effect undisputably can be given in case of curative and validating statute. In fact curative statutes by their very nature are intended to operate upon and affect past transactions having regard to the fact that they operate on conditions already existing.

23. Mr. Jetly submits that Rule 57 A of the erstwhile Central Excise Rules, 1944 (for short “said Rules”) under which modvat credit could be taken applied to such finished excisable goods as the Central Government may, by Notification in the official Gazette specify for the purpose of allowing credit of any duty paid on the

inputs used in or in relation to the manufacture of final products. The proviso enabled the Central Government to restrict credit. Rule 57-F deals with the manner of utilization of the inputs and the credit allowed in respect of duty paid thereon. The Central Government by Notification No.57/97 C. Ex. (NT) dated 18th September, 1997 amended Rule 57 F by inserting Clause (e) in sub Rule (17) whereby unutilised modvat credit was treated as lapsed on 01.10.1997. It is thus submitted that no amendment to Rule 57A of the said Rules was warranted. A comprehensive provision has been made in Section 37 of the said Act by insertion of Clause (xxviii) in sub-Section (2) with retrospective effect from 16.03.1995 as also validation of Rule 57 F (17) (e) of the said Rules likewise.

24. Mr. Jetly submits that Section 37(2) (xxviii) of the said Act red with Rule 57 F (17) (e) of the said Rules as amended by Sections 131 and 132 of the Finance Act, 1999 with retrospective effect make it abundantly clear that credit of duty lying unutilsed as on 01.10.1997 stood lapsed. The impugned amendment changes

the entire basis or foundation of the judgment rendered in Eicher Motors Ltd. (Supra). It is, thus, submitted that Legislature can always render a judicial decision ineffective by fundamentally altering or changing the character of the provisions on which it was given. In the submission of Mr. Jetly, Sections 131 and 132 of the Finance Act, 1999 have removed the illegality pointed out by the Supreme Court in the case of Eicher Motors Ltd. (supra). The conditions on which this decision is based, have been fundamentally altered, as such the decision in Eicher Motors Ltd. (supra) cannot be given effect in the altered circumstances.

25. Mr. Jetly, submits that the Supreme Court in the case of Eicher Motors Ltd. held that Section 37 of the said Act did not enable authorities to frame a rule enabling the lapsing of the balance in modvat account. The Parliament by enacting Section 131 of the Finance Act, 1999 inserted clause (xxviii) in Section 37 (2) of the said Act with retrospective effect and has removed the defect pointed out by the Supreme Court. By Section 132 of the Finance Act, 1999 Parliament has intealia; retrospectively

validated clause (e) of Sub-Rule (17) of Rule 57 F of the said Rules.

26. It is submitted that Sections 131 and 132 of the Finance Act, 1999 giving retrospective effect by inserting clause (xxviii) in Section 37 (2) of the said Act and validating clause (e) of sub-Rule (17) of Rule 57-F of the said Rules were passed to effectuate intention of the Government. It is, thus, reiterated that Parliament is competent to make retrospective law taking away the basis of the Supreme Court judgment and validating earlier actions. That is how Mr. Jetly appearing for the respondents – Revenue tried to justify the validity of the impugned Finance Act, 1999.

: **STATUTORY PROVISIONS** :

27. Before proceeding to consider the rival submissions, it is necessary to turn to the relevant statutory provisions which are the subject matter of challenge in this petition. The same are reproduced as under :

> *"**Section 37** : Power of Central Government to make rules – (1) The Central Government may make rules to carry into effect the purposes of this Act.*

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may :-

(i) provide for determining under section 4 the nearest ascertainable equivalent of the normal price ;

[(ia) having regard to the normal practice of the wholesale trade, define or specify the kinds of trade discount to be excluded from the value under section 4 including the circumstances in which and the conditions subject to which such discount is to be so excluded;]

[(ib)] provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid;

(ic) .....
(id).....
(ii) .....
(iii) .....
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(xxviii) provide for the lapsing of credit of duty lying unutilised with the manufacturer of specified excisable goods on an appointed date and also for not allowing such credit to be utilised for payment of any kind of duty on any excisable goods on and from such date.

***57-F**. MANNER OF UTILISATION OF INPUTS AND THE CREDIT ALLOWED IN RESPECT OF DUTY PAID THEREON – (1) The inputs on which credit has been taken may be used in or in relation to the manufacture of final products.*

(17) Notwithstanding anything contained in sub-rule (12) or rule 57-A, any credit of specified duty lying unutilised -

(a) .....

(b) .....
(c) .....
(d) .....

(e) on the first day of October, 1997, with the manufacturer of tooth powder and tooth paste, failling under sub-heading No.3306.10 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, cleared for home consumption or for export ;

Provided that nothing contained in this clause shall apply to credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the first day of October, 1997."

-:LEGAL SCENARIO:-

28. It is well settled that the legislature cannot directly over-rule judicial decision, it can retrospectively cure the defect noticed by the Judicial decision and, thus, render the judgment ineffective by means of the validating legislation. [see Saksena v. State of M.P. AIR (1976) SC 2250]

29.? In Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661, Heydon's case, (1954) 3 Co Rep

7a (V) was cited with approval; wherein it was said:

> "..... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerrned and considered:
>
> 1st. What was the common law before the making of the Act.
>
> 2nd. What was the mischief and defect for which the common law did not provide,
>
> 3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
>
> 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and `pro privato commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, `pro bono publico'."

-:CONSIDERATION:-

30. Before we proceed to consider the contentions raised on behalf of the petitioner, it would be useful to reiterate the circumstances leading to the enactment of the impugned validating legislation. The Apex Court, in the case of ***Eicher Motors Ltd. v. Union of India*** (cited supra) noticed infirmities and vitiating factors leading to the absence of power to frame rule enabling lapsing of

credit balance in the modvat account. The Apex Court had held that the assessee had a vested right in the credit balance which was not taken away by substantive legislation. This lacunae came to be removed by Sections 131 and 132 of the Finance Act, 1999 and said sections have only made small repairs by adopting permissible mode of legislation.

31. The Central Government by notification No. 57/97 C.Ex. (NT) dated 18th September, 1997 amended rule 57-F by inserting clause (e) in sub-rule (17) whereby unutilised modvat credit lying to the credit of the assessee as on 1st October, 1997 was allowed to lapse. Section 37(2)(xxviii) of the said Act read with rule 57-F(17) (e) of the Rules as amended by sections 131 and 132 of the Finance Act with retrospective effect have provided legislative teeth to make it abundantly clear that credit of duty lying unutilised as on 1st October, 1997 shall stand lapsed.

32. The above amendment has changed the entire basis or foundation of the judgment rendered in Eicher Motors Ltd. Case (supra) which was well within the legislative competence of the

Parliament. In other words, sections 131 and 132 of the Finance Act have removed the illegality pointed out by the Supreme Court in the case of Eicher Motors Ltd. (supra), wherein the foundation on which the decision was based, has been fundamentally altered by the said provision. The Parliament, inter alia; validated clause (e) of sub-rule (17) of rule 57 of the said Rules with retrospective effect.

33. It is no doubt true that in Eicher Motors Ltd. (supra) the Apex Court ruled that the modvat credit standing to the credit of the assessee on 31st September, 1997 was a vested right; which was accrued in favour of the petitioner or, at any rate, it was an existing right. It is a settled principle of interpretation of statues that a vested right or even an existing right, including a right of action is not affected or allowed to be taken away unless it is so affected or taken away by the enactment expressly or by necessary implication. It is no doubt true that a declaratory or a procedural enactment which is, normally, held to be retrospective. A remedial Act, on the contrary, is not necessarily retrospective, it

may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective effect by express terms or necessary intendment. [see AIR 1960 SC 12 (para 29) – The Central Bank of India and others v. Their Workman and also AIR 1973 SC 1227 – The Workmen of M/s.Firestone Tyre and Rubber Co. of India P.Ltd. v. The Management and others.] Some times it becomes necessary to examine whether the enactment has a prospective or retrospective effect so as to affect the existing or vested right which has accrued to the subject prior to the enactment. Examined from this angle, it is clear from the text of sections 131 and 132 of the Finance Act, 1999 that it has been specifically given a retrospective effect w.e.f. 1.10.1997 so as to effect existing or vested right which had accrued to the petitioner prior to the said enactment. The defect in the legislation, which was noticed by the Apex Court, stood removed by virtue of the said amendment.

34.? In ***Allied Motors (P) Ltd. v. C.I.T.,*** (1997) 3 SCC 472, certain unintended consequences flowed from a provision

enacted by Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply.

> "? A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be rad into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole."

35. In the case of ***Krishnamurthi & Co. v. State of Madras***, (1973) 31 STC 190, the Apex Court observed:

> "The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and also to validate the proceedings, including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the court to be vitiated by an infirmity. Such an amending and Validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. Such an amending and Validating Act to make

> `small repairs' is a permissible mode of legislation and is frequently resorted to in fiscal enactments."

36. In the above view of the matter, petitioner stands denuded of its vested right by virtue of the retrospective amendment. The contention raised on behalf of the petitioner that it does not take away vested right is devoid of any substance.

37. In the result, petition is dismissed. Rule is discharged with no order as to cots.

(J.P. DEVADHAR, J.) (V.C. DAGA , J.)